

### REMARKS

This Amendment responds to the Advisory Action mailed November 9, 2009. By the filing of this Amendment and Request for Continued Examination, Applicant hereby withdraws the Notice of Appeal filed November 11, 2009 and requests that prosecution be reopened.

#### Status of the Claims

Claims 58, 63, and 75-78 have been cancelled without prejudice or disclaimer of subject matter contained therein. Independent claim 79 and dependent claims 79-83 have been newly added. Support for the new claims can be found in the Application with reference to Figs. 7c, 13a, and the specification at page 25, line 25, through page 26, line 23, for example. The specification discloses the deployment of anchors from a catheter to plicate tissue. *See, e.g.*, specification at page 26, lines 11-16. Accordingly, no new matter is added by these new claims.

#### Rejections Under 35 U.S.C. § 102

Claims 58, 63, and 75-77 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,716,367 to Koike et al. Claims 58, 63, and 75-77 have been canceled rendering this rejection moot.

New independent claim 79 has been added and Applicant believes the § 102 rejection should not be extended to this claims because it recites, in part:

said anchor delivery structure movable from a first position wherein said anchor is disposed within said lumen, to a second position wherein said anchor is moved through said opening to engage the heart tissue, and to a

third position wherein said anchor is separated from said anchor delivery structure and remains engaged with the heart tissue.

Applicant respectfully submits claim 79 defines over the art of record because Koike et al. fail to disclose each and every element of independent claim 79. Koike et al. disclose a catheter device for suturing closed an opening between the atrium of a heart. In a previous Office Action dated August 12, 2009, the Examiner contends that the hooks 421 of the suture-hooking means 42 disclosed by Koike et al. are “anchors.” Applicant respectfully disagrees because the hooks 421 are suture grasping hooks for capturing a suture line and retracting it into the catheter body. Koike et al. fail to disclose that these hooks are anchors that engage tissue. Furthermore, even assuming, without admitting, that the hooks 421 could be considered anchors, Koike et al. fail to disclose an “anchor delivery structure movable . . . to a third position wherein said anchor is separated from said anchor delivery structure and remains engaged with the heart tissue.” The hooks 421 disclosed by Koike et al. are fixedly connected to the hooking catheter 4. There is no disclosure that hooking catheter 4 can be withdrawn while leaving hooks 421 engaged in tissue. Applicant submits that in the art of closed heart surgery, there is a significant difference between devices that are designed to remain in the body and those that do not remain in the body and the suture-hooking means 42 disclosed by Koike et al. are not designed to remain in the body. Accordingly, Koike et al. fail to disclose each and every element of independent claim 79. Applicant respectfully requests allowance of claim 79 over the art of record on this basis.

New claims 80-83 each depend from independent claim 79 and Applicant submits that claims 80-83 are allowable at least due to their dependence from an allowable independent claim and in view of their respective further recitations.

Rejection Under 35 U.S.C. § 103

Claim 78 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Koike et al. Claim 78 has been canceled rendering this rejection moot.

Applicant notes, however, that newly added claim 83 depends from claim 79 and otherwise recites the same features of canceled claim 78. Applicant submits that claim 83 is allowable at least due to its dependence from an allowable independent claim and in view of its respective further recitations. In particular, claim 83 further recites “a locking element coupled to said tensile member for movement therealong relative to said anchor.” Applicant respectfully submits that Koike et al. fail to teach or suggest a locking element for a suture-hooking system comprising hooks 421 that are fixedly connected to a hooking catheter 4 and that it would not have been obvious to one of ordinary skill in the art in view of Koike et al. to make such a modification. Accordingly, Applicant submits that claim 83 is allowable over Koike et al. for at least this additional reason.

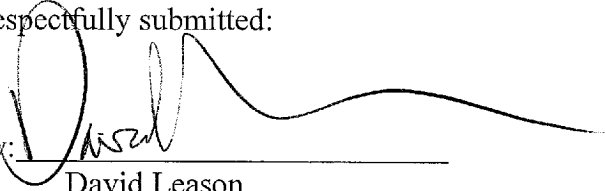
**CONCLUSION**

Submitted concurrently herewith is a Request for Continued Examination and the requisite fee set for in § 1.17(e). It is believed that no further fees are due or that all fees

have been paid; however, if the Patent Office believes that fees due, Deposit Account No. 50-4570 can be accessed up to \$1000.00.

Dated: January 10, 2010

Respectfully submitted:

By: 

David Leason

Registration No.: 36,195

LEASON ELLIS LLP

81 Main Street, Suite 503

White Plains, NY 10601

(914) 288-0022

(914) 288-0023 (Fax)

Attorneys/Agents for Applicant